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Treaty Establishing the European Defense Community

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are not working within the framework of a federal state, but within the area of international law. This is also indicated by the mixture of supranational and international features in the treaty.<sup>23</sup> Whether such a "quasi-federal" organization and organs, if it comes into being and functions unhindered by political and economic difficulties, can work *à la longue* without a federal state, remains to be seen. Let us not forget that the French Foreign Minister conceived this Community as the first step toward a federal Union of Europe. Even with respect to a confederation of states, history shows that it either leads to a federal state—"the more perfect Union"—as in the case of the United States, Switzerland, Germany, or breaks up into its component sovereign parts, as Bolivar's *Gran Colombia*. If the new Community and its organs can come into being and work, it seems to this writer likely that it either must lead to new antagonisms or, as we all hope, to a much more intimate union of this part of Europe.

JOSEF L. KUNZ

#### TREATY ESTABLISHING THE EUROPEAN DEFENSE COMMUNITY

Even before the adoption of the definitive Charter of the United Nations at San Francisco there were doubts in the minds of many observers whether the Security Council, composed as it was, would be equal to the task of making the principle of collective security effective. The Latin American States, having adopted a few months earlier their own Act of Chapultepec, were particularly insistent that a failure on the part of the Security Council to act in an emergency should not defeat the operation of their regional system of collective security. The result, as is well known, was the addition of Article 51 to the text of the original Dumbarton Oaks Proposals.

Having won their point at San Francisco the American States proceeded to give more definite form to their regional system, and on September 2, 1947, the Treaty of Reciprocal Assistance was signed at Rio de Janeiro. The treaty must not be looked upon as a mere procedure of reinsurance against the possible failure of the Security Council to fulfill its duty under the Charter of the United Nations. Rather it was adopted as the fulfillment of a principle that had been developing within the inter-American community since 1936 and that had been given practical application immediately following the outbreak of war in 1939 and more specifically so following the attack upon the United States at Pearl Harbor. Inter-American regional security was, therefore, not predicated solely upon the anticipated failure of the United Nations, but upon the conviction that there were advantages to be gained from a closer and more intimate sys-

<sup>23</sup> Van Raalte calls it "a new structure in the marches between internal and international law."

tem of mutual security functioning within the more limited circle of the American States.

By contrast the North Atlantic Treaty was based upon the demonstrated inability of the Security Council to meet the situation created by open manifestations of Communist imperialism. Drawing heavily upon the terms of the Rio Treaty, the North Atlantic Treaty pledged the contracting parties to assume an individual as well as a collective responsibility for the defense of its members against attack, creating in this respect obligations corresponding to the right of individual and collective self-defense reserved to the Members of the United Nations under Article 51 of the Charter. Eleven states, including the United States and Canada, were now bound together in a separate regional security system, which, while not denying the primary responsibility of the Security Council of the United Nations for the maintenance of peace, was ready to act without delay if the Soviet Union should rely upon its veto power to give it a free hand in resorting to force for the accomplishment of its aims.

Like the North Atlantic Treaty Organization, the new European Defense Community, established by a treaty signed on May 27,<sup>1</sup> constitutes a regional group of six states whose primary objective is mutual defense against an attack coming from without the group. An armed aggression against any member state is to be considered as an attack directed against all, and the member states and the European Defense Forces shall furnish all military and other aid in their power. But whereas the defense force of the North Atlantic Treaty Organization consists of contingents from their national armies, operating as national units, the army of the Defense Community is a true community army, wearing the uniform of the Community and under the direct command of officers of the Community, and so constituted that its component parts could not operate effectively apart from the Community. In this way the problem was solved of obtaining a substantial contribution from Germany to the defense of Europe without at the same time creating a German national army.

Considering that the general objectives of the two regional groups in respect to defense were the same, it was to be expected that guarantees of mutual security would be given between the two groups. On the part of the North Atlantic Treaty Organization a protocol was signed, bearing the same date as that of the Defense Community Treaty, extending to the members of the Defense Community the assurance that an attack upon any one of them would be considered as an attack upon the parties to the Organization and that action would be taken by them, individually and in concert with the other parties, in accordance with the terms of the treaty.<sup>2</sup>

<sup>1</sup> Senate Execs. Q and R, 82d Cong., 2d Sess., p. 167.

<sup>2</sup> This Protocol was duly submitted to the Senate for approval and was ratified by the President on August 2nd, 1952 (Senate Exec. R, 82d Cong., 2d Sess.). The Declaration accompanying the Protocol, by which the United States, the United Kingdom and

Similar guarantees were given by a special protocol to the members of the North Atlantic Treaty Organization by the members of the Defense Community, although as a matter of fact five of the members of the Defense Community are members of the Organization.

But the significance of the European Defense Community extends far beyond the mere creation of a community defense army and the collateral provisions necessary to make such an army an effective one. Almost startling in its break with the traditions of national sovereignty which defeated earlier proposals of European unity, the treaty announces that the Defense Community is to be "supranational in character, consisting of common institutions, common armed Forces and a common budget." The Community is to have juridical personality and is to enjoy in its international relations the juridical capacity necessary to the exercise of its functions and the attainment of its ends. It is to be represented by "institutions," consisting of a Council of Ministers, a Common Assembly, a Commissariat and a Court of Justice. Article 38, dealing with the Assembly, provides that it shall be "elected on a democratic basis"; and the Assembly is instructed to bear in mind in its work that the definitive organization which will take the place of the transitional organization should be conceived in terms of "an ultimate Federal or confederal structure, based upon the principle of the separation of powers and including, particularly, a bicameral representative system." Provision is made for a community budget and for contributions by the member states in accordance with the procedure adopted for the North Atlantic Treaty Organization.

It is clear, therefore, that while the immediate objective of the Defense Community is, as stated in Article 2, defensive, to be accomplished by the integration of the defense forces of the member states and by the rational and economic utilization of their resources, the ultimate outcome may well be the nucleus of the long-sought European Union, the realization of a dream that has haunted the imagination of statesmen from Dubois to Briand and Churchill. What has begun as union for defense may well lead to union for peace and prosperity when the immediate threat of attack is over, if only time can be had to give the transitional organization a good start. The Treaty Constituting the European Coal and Steel Community, signed on April 18, 1951,<sup>3</sup> by the same six states now participating in the Defense Community Treaty, is concrete evidence that they understand the practical implications of the step they are taking.

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France expressed their "abiding interest" in the Defense Treaty and pledged themselves to defend the Community in accordance with Article 4 of the North Atlantic Treaty, did not call for Senate approval.

<sup>3</sup> Printed in Supplement to this JOURNAL, p. 107.